

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, DC

Midwest Terminals of Toledo	:	
International, Inc.	:	Cases 08-CA-038092, et al.
And	:	
International Longshoremen's Association, Local 1982	:	
	:	

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**RESPONDENT MIDWEST TERMINALS OF TOLEDO INTERNATIONAL, INC.'S  
POSITION STATEMENT**

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**BACKGROUND**

Now comes the Respondent, Midwest Terminals of Toledo International, Inc., ("MWTTI," "Company" or "Respondent") and hereby files its Position Statement as requested by the Office of the Executive Secretary. This entire case was vacated by the United States Court of Appeals for the District of Columbia in *Midwest Terminals of Toledo Int. Inc., v. NLRB*, Case No. 15-1126 (July 14, 2017) (Exhibit A).

**1. From the Beginning the General Counsel was on Notice of the Affirmative Defense**

From a pure procedural standpoint, this case is nothing like the General Counsel wants to claim it is. The reason, of course, is that this case is in a procedural mess due specifically to the former and present General Counsels who refused to follow the law and insisted they were right

and could enforce the Act as they pleased. They held this position in the matter *sub judice* right up until the United States Supreme Court told them that they were wrong. When the United States Court of Appeals for the D.C. Circuit told General Counsel Griffin he was wrong, General Counsel Griffin ignored that decision and appealed to the United States Supreme Court where he lost in the case of *SW Gen., Inc. v. NLRB*, 796 F.3d 67, 78–82 (DC Cir. 2015), *affd.*, 580 U.S. \_\_\_, 137 S. Ct. 929 (2017). As a direct result of those losses, this case now comes back to the Board with a vacated decision as set forth in Exhibit A.

But understand, this is not like any of the other cases the General Counsel wants to argue it is similar to because we are not dealing with a lack of a Board quorum in *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014) or the assertion that all the Board elected to issue decisions with only 2 members, *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. May 1, 2009). The *Laurel Baye* case is arguably the same type of issue as in *Noel Canning*. We are also not dealing with the run of the mill dispute between a lawfully appointed Board and General Counsel who have a disagreement on a particular point of law with the Circuit Courts and have a decision vacated and remanded. *Lancaster Symphony Orchestra v. NLRB*, 2014 U.S. App. LEXIS 20161 (D.C. Cir. Oct. 21, 2014). The General Counsel could site hundreds or thousands of these types of cases we are sure.

All of those cases deal with the actions of the final decision maker and that is the Board itself. These above cited cases were actions taken by the Board. Thus, the decisions were the only matter determined to be unlawful.

What we have in this case that the General Counsel wants everyone to ignore is the proverbial elephant in the room. This case is not about action by the Board, this case goes to the very heart of *the prosecution of all of General Counsel Solomon's cases*. In *SW General*,

General Counsel Solomon was found to have been prosecuting cases unlawfully *ab initio*. All any Defendant needed to do was to assert that as an affirmative defense to prevail. This is probably why General Counsel Griffin fought these cases so hard.

Yet, General Counsel Griffin does not get off so easy. He was the one who decided from the moment he took office that General Counsel Solomon had the authority to prosecute these cases. In the Respondent's case, throughout this litigation, this affirmative defense was plead in its Answer before trial. In its briefs to the ALJ. In its briefs to the Board. And in its briefs to the Circuit Court of Appeals in D.C. General Counsel Griffin argued in all these proceedings that he had power to continue with the prosecution of all of Mr. Solomon's cases, including the Respondents.

However, as stated above, the Respondent raised this defense from the beginning. The General Counsel throughout the litigation never once sought the protection of the exemptions under Federal Vacancies Reform Act ("FVRA"), 5 U.S.C. § 3345 *et seq.* At no time throughout those proceedings, did General Counsel Griffin ever once claim or assert that defense. General Counsel Griffin has for years argued that FVRA did not even apply. See *SW General*, *supra*.

Further, having raised this affirmative defense, Respondent had placed the General Counsel on notice that the Respondent believed that FVRA did in fact apply to this case. The General Counsel, in blind denial of the case facts before him, never once throughout the litigation sought the protections set forth in FVRA. At no time before or after the Circuit Court's decision in *SW General*, did the General Counsel ever seek in any matter to plead the protections of FVRA or to assert those protections.

Here we are certain the General Counsel is going to request the Board to accept all the record below and the trial and the decision of the ALJ as if the Court of Appeals had never found

that this case was unlawfully prosecuted *ab initio*. Therefore, the entire case before this proceeding is now vacated and null and void. There is no record below.

## **2. The Respondent is Appealing the Remand.**

The Respondent is appealing the remand aspect of the case from the Circuit Court's Order since the same Circuit Court, but a different panel, in the *SW General* case vacated with no remand. That "no remand" Order was reviewed and approved by the Supreme Court. Thus, the Respondent has been forced to fight this case on two fronts – at least for the moment.

## **3. The Entire Prosecution of this Case by the General Counsel was Unlawful**

The actions of the General Counsel have been determined to be actions of *ultra vires* since the General Counsel had no authority to act. Therefore, the entire prosecution of the case was unlawful. The Complaint was unlawful. The trial scheduled by the General Counsel was unlawful. The trial itself was unlawful. The decision by the Administrative Law Judge ("ALJ") was unlawful. The appeal to the NLRB was unlawful. The decision by the Board in affirming in most part the ALJ decision was unlawful. The appeal of the case to the Circuit Court in D.C. was unlawful. All these unlawful acts have resulted in the final action by the Circuit Court in D.C. that *vacated* the Board's decision because the General Counsels actions were -- unlawful.

However, the General Counsel in the cases he has cited to Respondent so far,<sup>1</sup> seems to want to just focus on the Board's decision as the only issue in dispute. The fact is that the ALJ decision was also vacated.<sup>2</sup>

Respondent is unsure if the General Counsel really understands what the Circuit Court did when it vacated the decision on the basis of *SW General*. Everything that the General

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<sup>1</sup> In the Memorandum in opposition to an extension of time to respond to the request for a position statement, the General Counsel cited several NLRB decisions that he considered to apply to these facts.

<sup>2</sup> By these actions by the Circuit Court in D.C., under EAJA, Respondent will be entitled to attorney fees in a Motion Respondent will be filing in the Circuit Court in D.C.

Counsels did in the earlier proceedings was unlawful. Not just the Board's decision. ***EVERYTHING.***

By vacating the Board's affirmance of the ALJ decision on the basis that General Counsel Solomon had no legal right to issue the Complaint against Respondent and General Counsel Griffin had no legal right to continue that same litigation, there is not only no Board decision, there is no ALJ decision. As stated above, *everything* that *both* the General Counsels did was unlawful as they acted without any legal authority. To "vacate" is defined as:

To vacate an order or a judgment is to "nullify or cancel; make void; invalidate." Black's Law Dictionary 1584 (8th ed. 2004).

Ferguson v. Commonwealth, 51 Va. App. 427 (Va. Ct. App. Apr. 8, 2008).

The General Counsel obviously *wishes* that this case was like *Noel Canning* or *Laurel Baye* where the specific action of the Board was in error and its decision was vacated because of actions the *Board* took. However, it was not the Board who acted improperly in *SW General* and against the Respondent in the matter *sub judice*. It was *both* of the General Counsels' who acted unlawfully *ab initio*. The Board's only error was in buying the arguments that the General Counsel made that everything they did was lawful when in fact it was not.

Both the Board and the ALJ decision, which the Board had adopted in most part, were the decisions that were being appealed and were the ones vacated. Because of the actions by General Counsel Solomon who filed the Complaint and General Counsel Griffin who prosecuted it against the Respondent was unlawful, this entire case, from the beginning was unlawfully prosecuted. The General Counsel may try to argue that somehow, even though everything from the Complaint forward was unlawful, that it was only the final act by the Board that was unlawful. This is clearly a disingenuous argument because the entire case before the Court's in

*SW General* concerned the actions of the *General Counsel* and *not the Board*. Both the ALJ and the Board followed the arguments made by the General Counsel who wrongfully argued they were lawfully prosecuting the cases.

#### **4. The General Counsel Cannot Now Ratify a Case that Has Been Voided and No Longer Exists**

In the case *sub judice*, at the General Counsel's requested that the Board's decision be vacated and remanded back to the NLRB. On July 14, 2017, over the objection of the Respondent only as to the remand, the General Counsel's motion was granted.<sup>3</sup> On August 14, 2017 and on August 16, 2017, the General Counsel after remand of the vacated decision, now decides that FVRA does apply and he has sought to "ratify" the actions of General Counsel Solomon. (Exhibit B and Exhibit C).

First of all, the General Counsel has in fact omitted a few important facts set forth in his letters to Respondent attached as exhibits that "after appropriate review and consultation with my staff..." he decided to ratify this case. However, the Undersigned attended a conference where General Counsel Griffin spoke in March of 2017. The Undersigned questioned him regarding all the pending cases where this *SW General* defense was raised. Mr. Griffin stated that since *SW General* was issued by the DC Circuit that he had ordered his office to conduct a complete review of *every case* before the NLRB where the Respondent had raised a similar defense. He further stated he would then decide if he should reaffirm them. In a follow-up question by the Undersigned, General Counsel Griffin was asked how many of all the cases that he had reviewed

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<sup>3</sup> The General Counsel did everything he could to expedite this remand including asking the Circuit Court to issue an immediate Mandate, as opposed to the normal time the adverse party would get to appeal the decision. Given the fact that the Obama appointments at that time were in charge at the Board, one does not have to wonder long on why the General Counsel was so bent on getting a remand ASAP. Clearly, the General Counsel was seeking to stack the deck against Respondent. The idea that the General Counsel wanted to get a quick result for any sort of justice is belied by the fact that some of these charges in the Complaint were several YEARS old before the case was ever tried.

did he reaffirm? The response was “all of them.” So much for the “appropriate review” that there was not a single case or allegation that did not pass muster.

This case was tried on June 10 to 14, 2013. From those dates, through a trial, an appeal to the NLRB and a later appeal to the D.C. Circuit Court, not once did the General Counsel raise FVRA and/or seek to ratify the actions of General Counsel Solomon. Not until after the Circuit Court vacated the decision over *four years* later on July 14, 2017, and remanded the case back to the NLRB, has the General Counsel now has decided to throw a Hail Mary pass and see if he cannot raise this case from the dead.

This is not a case of a bad decision by the Board that upon remand it can somehow fix. This is a case, because of the actions of General Counsel Solomon followed by General Counsel Griffin, who prosecuted this case unlawfully *ab initio* until the end. And this case stayed that way until the Circuit Court rendered all these proceedings as void *ab initio*. Thus, in this matter, the General Counsel now seeks to “ratify” his and General Counsel Solomon’s actions after they have already been nullified by the Circuit Court and declared void *ab initio*.

With no action taken over all these years by the General Counsel, from waiver to estoppel, there is no way the General Counsel can get away with this last-minute tactic after all the years of litigation. *See, Hooks ex rel. NLRB v. Kitsap Tenant Support Servs.*, 816 F.3d 550, 553 (9th Cir. Wash. Mar. 7, 2016). This defense was waived by the General Counsel a long time ago when he opted not to seek the shelter of FVRA but instead chose to argue why did not apply.

The entire record in this case is void *ab initio*. The prosecution was voided *ab initio* when the Circuit Court having vacated this case on the basis of prosecutorial misconduct. There was no lawful Complaint, no lawful trial, no lawful ALJ Decision, no lawful appeal to the Board, no lawful Board decision and no lawful appeal to the Circuit. All due to the General Counsel’s

actions that has now resulted in all these actions being voided by the Circuit Court of D.C.

Bringing FVRA up now, does not give or make matters found by the Circuit Court to be void and a nullity now suddenly valid. They no longer legally exist. Therefore, after the Circuit Court's decision, there is no valid Complaint, no valid transcript, no valid ALJ decision, no valid Board decision and finally, no valid ratification under FVRA because none of these actions he seeks to ratify now legally exist.

#### **5. The General Counsel Is in a Hole Needs to Stop Digging**

The simple fact is that by having this decision vacated by the Court of Appeals, the Respondent is already entitled to its attorney fees under the Equal Access to Justice Act. The Respondent will soon be filing that Motion in the Circuit Court in D.C.

By continuing to prosecute a case he cannot win, all the General Counsel is doing is running up the legal fees that the NLRB will be Ordered to pay. Sometimes, even with all the power that a General Counsel has, there are some things he must just accept and move on and this case is one of them. When in a hole that General Counsel Solomon and General Counsel Griffin dug on their own, the General Counsel today needs to just stop digging. Otherwise, at some point the NLRB will have to write a check that just keeps getting bigger.

Clearly, the fast Motion to Vacate, with a fast request for an immediate Mandate, to get this case the fastest way before the Obama Board did not work out as planned. The loss of what the General Counsel thought was the one final way to get a quick ratification failed. Now the bills will be just keep piling up.

#### **6. The Board's Decision with Respect to Dues Deductions**

Because this case cannot be ratified, there will be no decision on the basis of the record below. Even so, there is one aspect of the Board's decision that went way over the line.



Nowhere in the General Counsel's case was it ever presented at trial, that this case was anything other than a case of stopping the deduction of dues under the legal analysis of whether or not *WKYC-TV, Inc.*, 359 NLRB 286 (2012), was valid law that had overturned almost 50 years of case law in *Bethlehem Steel*, 136 NLRB 1500 (1962).

At no point in time in the trial was the May 22, 2012 letter ever discussed by a witness. It was just simply placed in the record as a lot of other documents that were not discussed. Had it been presented by any witness as to somehow be binding on the Respondent, then the document where *both sides* terminated all agreements on October 1 and 3, 2012 would have been pointed out to any witness. That would have in short order stopped that line of argument. G.C. Exhibit 23 attached. However, the Respondent's letter dated October 3, 2012, in direct response to the Union's October 1, 2012 correspondence was captioned "Notice to Terminate" was located as G.C. Exhibit 23. In that letter, the Respondent stated:

This letter is to advise you that I am now the legal counsel on all labor matters for Midwest Terminals of Toledo International (hereinafter "MWTTI").

In addition, pursuant to Section 30 of the Collective Bargaining Agreement between Local 1982 and MWTTI *the Company hereby gives notice of the termination of this Agreement.*

With respect to your letter dated October 1, 2012 to Chris Blakely, *your offer to extend the contract pending the negotiations between MWTTI and the Great Lakes District for a Master Agreement is rejected. Unless agreed to otherwise by the parties during negotiations, the contract with Local 1982 will terminate on December 31, 2012 at 12:00 Midnight.*

G.C. Exhibit 23 (copy attached)(emphasis added).

Therefore, any such agreement that existed between the parties on May 22, 2012, was terminated on December 31, 2012. It would appear that the Board was so eager to avoid a case

ruling on the *WKYC-TV, Inc.*, decision, that on the basis of a one sentence line in a brief by the General Counsel, it elected to jump at the chance not to have to defend *WKYC-TV, Inc.*

*That decision was plain error.* The Board has consistently taken the position that no “magic words” are required to terminate any agreements between the parties. As one ALJ stated:

No "magic words" are required and if the party's notice reasonably conveys to the other party its desire to enter into negotiations for a new collective-bargaining agreement, this is satisfactory to show a desire to amend or terminate and thus avoid contract renewal.

*IAM (South Jersey Gas)*, 2009 NLRB LEXIS 279 p.19. *See also, The Oakland Press Co.*, 229 N.L.R.B. 476 (1977) and cases cited therein.

Therefore, the analysis of this case on the union dues deduction issue should have been limited at that time to the analysis between *WKYC-TV, Inc.* and *Bethlehem Steel*. An issue that the Respondent was ready to defend that the Board unlawfully dodged the issue and obviously did not want to fight over it.

While this matter on this point is now moot, because the General Counsel will seek to argue that the record below is still alive and kicking, Respondent wanted to point out an obvious error the Board made.

## **7. The Board Should Have Complete Briefs on the Ratification Issue**

Within a very short time, the Respondent has been hit with both the Remand and the Circuit Court’s extraordinary immediate Mandate as well as the Executive Secretary’s request for this Position Statement. In addition, the Respondent has begun the process to appeal the remand. The Respondent has already filed in the Circuit Court a Petition for Rehearing En Banc. Copy attached as Exhibit D.

This issue is too important for short position statements. Therefore, if anything, this Board should require with proper Notice that the parties fully brief the issue of whether or not

the General Counsel, after years of engaging in unlawful *ultra vires* actions, where he never raised the FVRA defense, where the Circuit Court vacated and nullified everything he did, can the General Counsel go forward and raise this case from the dead with such a belated “ratification?”

**8. This Case Should be Stayed Until the New General Counsel is Appointed**

Even before briefs are requested, given the long history of misconduct by General Counsel Salomon and General Counsel Griffin, this case should be held in abeyance to allow the new General Counsel to review this matter and decide if it should proceed or the case should be dismissed. In two months’ time, General Counsel Griffin will be gone. Why should the new General Counsel or even the new Board be saddled with cleaning up his mistakes? At least allow the new General Counsel the opportunity to decide if this case should be dismissed.

Respectfully submitted,

/s/ Ronald L. Mason

Ronald L. Mason  
Aaron T. Tulencik  
Mason Law Firm Co., LPA  
425 Metro Place North, Suite 620  
Dublin, Ohio 43017  
p: 614.734.9450  
f: 614.734.9451

*Counsel for Respondent, Midwest  
Terminals of Toledo International, Inc.*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 29, 2017 an electronic original of Respondent Midwest Terminals of Toledo International, Inc.'s Statement of Position on Remand from the United States Court of Appeals for the District of Columbia Circuit was filed via the Department of Labor, National Labor Relations Board electronic filing system, Office of the Executive Secretary and, further, that copies of the foregoing were transmitted to the following individuals by electronic mail:

Cheryl Sizemore, Esq.  
Kelly Freeman Esq.  
National Labor Relations Board, Region 8  
Anthony J. Celebreeze Federal Building  
1240 E. Ninth Street, Room 1695  
Cleveland, OH 44199-2086  
[Cheryl.Sizemore@nrlrb.gov](mailto:Cheryl.Sizemore@nrlrb.gov)  
[Kelly.Freeman@nrlrb.gov](mailto:Kelly.Freeman@nrlrb.gov)

*Counsel for the General Counsel*

Joseph Hoffman Jr., Esq.  
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Faulkner, Hoffman & Phillips, LLC  
20445 Emerald Parkway Dr., Suite 210  
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[hurm@fhplaw.com](mailto:hurm@fhplaw.com)

*Counsel for Charging Party, Local 1982*

Sam Eidy  
3627 Cavalier Drive  
Toledo, Ohio 43606-1146  
[hotrodlawman@worldnet.att.net](mailto:hotrodlawman@worldnet.att.net)

/s/ Ronald L. Mason  
Ronald L. Mason

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 15-1126****September Term, 2016****NLRB-8CA038092****Filed On: July 14, 2017**

Midwest Terminals of Toledo International,  
Inc.,

Petitioner

v.

National Labor Relations Board,

Respondent

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Consolidated with 15-1168

**BEFORE:** Tatel, Brown, and Wilkins, Circuit Judges

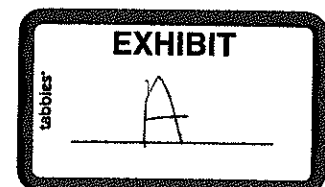
**ORDER**

Upon consideration of the motion to vacate and remand and for expedited issuance of mandate in light of the Supreme Court's decision in NLRB v. SW General, Inc., the opposition thereto, and the reply, it is

**ORDERED** that the petition for review be granted, the cross-application for enforcement be denied, the decision of the National Labor Relations Board be vacated, and the case remanded for further proceedings before the Board. See NLRB v. SW General, Inc., 137 S. Ct. 929 (2017), aff'g SW General, Inc. v. NLRB, 796 F.3d 67 (D.C. Cir. 2015). Petitioner may raise its laches argument on remand and seek judicial review if unsatisfied with the result.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to issue the mandate forthwith to the agency.

**Per Curiam**



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**MIDWEST TERMINALS OF TOLEDO, INC.**

**and**

Case 08-CA-038092

**MARK ANTHONY LOCKETT**

**NOTICE OF RATIFICATION**

The prosecution of this case commenced under the authority of Acting General Counsel Lafe E. Solomon during the period after his nomination on January 5, 2011, while his nomination was pending with the Senate, and before my confirmation on November 4, 2013.

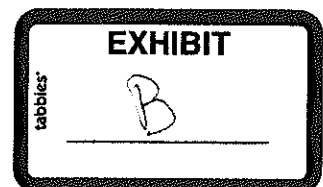
On March 21, 2017, the United States Supreme Court held that Acting General Counsel Solomon's authority under the Federal Vacancies Reform Act (FVRA), 5 U.S.C. §§ 3345 et seq., ceased on January 5, 2011, when the President nominated Mr. Solomon for the position of General Counsel. *NLRB v SW General, Inc.*, 580 U.S. \_\_\_, 137 S. Ct. 929 (March 21, 2017).

I was confirmed as General Counsel on November 4, 2013. After appropriate review and consultation with my staff, I have decided that the issuance of the complaint in this case and its continued prosecution are a proper exercise of the General Counsel's broad and unreviewable discretion under Section 3(d) of the Act. Congress provided the option of ratification by expressly exempting, pursuant to FVRA Section 3348(e)(1), "the General Counsel of the National Labor Relations Board" from the FVRA provisions that would otherwise preclude the ratification of certain actions of other persons found to have served in violation of the FVRA.

For the foregoing reasons, I hereby ratify the issuance and continued prosecution of the complaint.

Date: August 14, 2017

/s/ Richard F. Griffin, Jr.  
Richard F. Griffin, Jr.  
General Counsel



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**MIDWEST TERMINALS OF TOLEDO, INC.**

**and**

**Case 08-CA-038092**

**MARK ANTHONY LOCKETT**

**AFFIDAVIT OF SERVICE OF: Notice of Ratification of Complaint and Prosecution of  
Complaint and Letter to the Board regarding this Ratification.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 14, 2017 I served the above-entitled document(s) by regular mail, as noted below, upon the following persons, addressed to them at the following addresses:

Otis Brown  
2105 N Detroit Ave  
Toledo, OH 43606-4713

Aaron T. Tulencik , Attorney  
Mason Law Firm Co., L.P.A.  
425 Metro Plaza N. Ste., 620  
Dublin, OH 43017-5357

Miguel Rizo, Sr., Local 1982 Steward  
International Longshoremen's Association -  
AFL-CIO, Local 1982  
2632 Hayden St  
Oregon, OH 43616-2110

Alex Johnson , Owner  
Midwest Terminals of Toledo, Inc.  
3518 Saint Lawrence Dr  
Toledo, OH 43605-1079

Mark Anthony Lockett, Sr.  
3334 Elm St  
Toledo, OH 43608-1254

Matthew T Hurm, Esq.  
Faulkner Hoffman & Phillips LLC  
20445 Emerald Pkwy Ste 210  
Cleveland, OH 44135-6029

Ronald L. Mason, Esq.  
Mason Law Firm Co., L.P.A.  
425 Metro Pl N Ste 620  
PO Box 398  
Dublin, OH 43017-5357

August 14, 2017

Date

Lily Nguyen  
Designated Agent of NLRB

Name

/s/ Lily Nguyen

Signature



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**MIDWEST TERMINALS OF TOLEDO, INC.**

**and**

**Case 08-CA-038092, et al.**

**MARK ANTHONY LOCKETT**

**AMENDED NOTICE OF RATIFICATION**

The prosecution of this case commenced under the authority of Acting General Counsel Lafe E. Solomon during the period after his nomination on January 5, 2011, while his nomination was pending with the Senate, and before my confirmation on November 4, 2013.

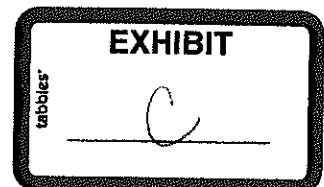
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I was confirmed as General Counsel on November 4, 2013. After appropriate review and consultation with my staff, I have decided that the issuance of the complaint in this case and its continued prosecution are a proper exercise of the General Counsel's broad and unreviewable discretion under Section 3(d) of the Act. Congress provided the option of ratification by expressly exempting, pursuant to FVRA Section 3348(e)(1), "the General Counsel of the National Labor Relations Board" from the FVRA provisions that would otherwise preclude the ratification of certain actions of other persons found to have served in violation of the FVRA.

For the foregoing reasons, I hereby ratify the issuance and continued prosecution of the complaint.

Date: August 16, 2017

/s/ Richard F. Griffin, Jr.  
Richard F. Griffin, Jr.  
General Counsel



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**MIDWEST TERMINALS OF TOLEDO, INC.**

**and**

**Case 08-CA-038092, et al.**

**MARK ANTHONY LOCKETT**

**AFFIDAVIT OF SERVICE OF: Amended Notice of Ratification of Complaint and Prosecution of Complaint and Letter to the Board regarding this Ratification.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 16, 2017 I served the above-entitled document(s) by regular mail, as noted below, upon the following persons, addressed to them at the following addresses:

Otis Brown  
2105 N Detroit Ave  
Toledo, OH 43606-4713

Aaron T. Tulencik , Attorney  
Mason Law Firm Co., L.P.A.  
425 Metro Plaza N. Ste., 620  
Dublin, OH 43017-5357

Miguel Rizo, Sr., Local 1982 Steward  
International Longshoremen's Association -  
AFL-CIO, Local 1982  
2632 Hayden St  
Oregon, OH 43616-2110

Alex Johnson , Owner  
Midwest Terminals of Toledo, Inc.  
3518 Saint Lawrence Dr  
Toledo, OH 43605-1079

Mark Anthony Lockett, Sr.  
3334 Elm St  
Toledo, OH 43608-1254

Matthew T Hurm, Esq.  
Faulkner Hoffman & Phillips LLC  
20445 Emerald Pkwy Ste 210  
Cleveland, OH 44135-6029

Ronald L. Mason, Esq.  
Mason Law Firm Co., L.P.A.  
425 Metro Pl N Ste 620  
PO Box 398  
Dublin, OH 43017-5357

August 16, 2017

Date

Lily Nguyen  
Designated Agent of NLRB  
Name

/s/ Lily Nguyen  
Signature

Principal:

Ronald L. Mason 614 734 9454



Of Counsel:

Aaron T. Tulencik 614 734 9442

October 3, 2012:

**BY FAX: 419-754-2678****And Certified Mail Return Receipt Requested**

Otis Brown

President

Local 1982

International Longshoreman's Association

2300 Ashland Avenue

Suite 225

Toledo, Ohio 43620-1280

Re: Notice of Termination

Dear Mr. Brown:

This letter is to advise you that I am now the legal counsel on all labor matters for Midwest Terminals of Toledo International (hereinafter "MWTTI").

In addition, pursuant to Section 30 of the Collective Bargaining Agreement between Local 1982 and MWTTI the Company hereby gives notice of the termination of this Agreement.

With respect to your letter dated October 1, 2012 to Chris Blakely, your offer to extend the contract pending the negotiations between MWTTI and the Great Lakes District for a Master Agreement is rejected. Unless agreed to otherwise by the parties during negotiations, the contract with Local 1982 will terminate on December 31, 2012 at 12:00 Midnight.

Please provide me dates in October when the Union is available to meet and bargain.

I propose that the parties meet at a facility in the greater Toledo area and split the expenses 50-50. In addition, negotiations should start at 10:30 AM and end at 5:00 PM. Further, each side will pay for their own individual expenses. MWTTI will not pay for any employee to attend the negotiations.

Please advise me who will be on your bargaining committee so we can make arrangements to give that person administrative unpaid leave.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Ronald L. Mason', is written over a horizontal line.  
Ronald L. Mason

cc: Midwest Terminals of Toledo International

G.C 23

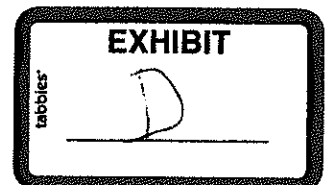
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MIDWEST TERMINALS OF TOLEDO	)	
INTERNATIONAL, INC.	)	
	)	
Petitioners/Cross-Respondents	)	Nos. 15-1126
	)	15-1168
v.	)	
	)	
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent/Cross-Petitioner	)	
_____	)	

**PETITION FOR HEARING OR REHEARING EN BANC.**

NOW COMES Petitioners/Cross-Respondents, Midwest Terminals (“Defendant” or “Midwest Terminals”) and hereby files this Petition for Hearing or Rehearing En Banc.

The panel decision in this case conflicts with the decisions of both this Court and the Supreme Court in the case of *SW Gen., Inc. v. NLRB*, 796 F.3d 67, 78–82 (DC Cir. 2015), *affd.*, 580 U.S. \_\_\_, 137 S. Ct. 929 (2017) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions. A copy of the opinion of the panel from which rehearing is being sought is attached hereto as Exhibit A. Also attached hereto as Exhibits B and C respectively are a Certificate of the Parties and a Disclosure Statement.



Further, Midwest Terminals understands that there is at least one other Petitioner with the identical procedural facts as Midwest Terminals that is also filing a Petition for Hearing or Rehearing En Banc in *Newark Electric Co., et al v. NLRB*, Case Nos. 15-1111 and 15-1162. Midwest Terminals would ask this Court to allow Midwest Terminals to adopt all the arguments made by Newark Electric as if Midwest Terminals as if they were made here. The issues in both of these cases are identical.

**1. By the Remand the Panel Decision Conflicts with *SW General*.**

One would think Midwest Terminals “won” the case as the NLRB decision was “vacated.” *That is correct, Midwest Terminals “won” the case and will be entitled to attorney fees when it files its Motion with this Court.* However, the simple fact is in that win, Midwest Terminals was treated differently than in the decision of this Circuit Court in *NLRB v. SW General*, 796 F.3d 67 (D.C. Cir. 2015) *affr’d*, *NLRB v. SW General, Inc.*, 137 S. Ct. 929 (2017).

A careful reading of the decision in the *SW General* opinion of the D.C. Circuit Court, at the conclusion of the opinion, the Court’s disposition of the case is that it VACATED the NLRB decision, but it **DID NOT REMAND** back to the NLRB. Rather, the *SW General* decision was not only totally reversed, but this Circuit Court denied the NLRB a second bite at the apple. The Circuit Court of

Appeals panel of Henderson, Srinivasan and Wilkins in *NLRB v. SW General*, 796

F.3<sup>rd</sup> 67 (D.C. Cir. 2015) stated:

For the foregoing reasons, we grant the petition for review, deny the cross-application for enforcement and *vacate* the NLRB order. So ordered.

*NLRB v. SW General*, *supra*, p. 83 (emphasis added).

Further, look at what the Supreme Court held in its review of the D.C. Circuit case in *NLRB v. SW General, Inc.*, 137 S. Ct. 929 (2017). The Court stated:

Accordingly, the judgment of the Court of Appeals is *affirmed*.  
It is so ordered.

*NLRB v. SW General, Inc.*, *supra* p. 944. (emphasis added).

In the matter *sub judice*, Midwest Terminals strongly opposed only part of the NLRB Motion to Vacate because it also sought to REMAND the case back to the NLRB. The Circuit Court of Appeals panel of Tatel, Brown and Wilkins in their decision did not follow the Order in the *SW General, Inc.*, and instead remanded the case back to the NLRB. This Panel stated:

The decision of the National Labor Relations Board be vacated, *and the case remanded for further proceedings before the Board*.

*Midwest Terminals v. NLRB*, Case No. 15-1126 (July 14, 2017) (emphasis added). Judge Wilkins, the only member of both panels, did not explain why he voted in these two cases *both ways* that are clearly in conflict with themselves.

The Supreme Court affirmed the Circuit Court's decision to vacate without a remand and this panel failed to follow BOTH decisions in *SW General* without any

explanation. The Supreme Court's decision is the law of the land. If it thought the panel in *SW General* was wrong not to remand, it would have ordered a Remand. The Supreme Court chose to affirm the panel decision to vacate the NLRB decision without a Remand. Thus, for *SW General*, its case was now terminated.

Further, Midwest Terminals argued at a minimum, if the panel considered a remand of the case, it requested that Midwest Terminals be allowed to at least brief and orally argue why the case should not be remanded. Midwest Terminals wanted to make its point in briefs and oral argument and get a written decision explaining any deviation from *SW General's* case that vacated *without a remand*.

Although the NLRB requested a remand, why should Midwest Terminal's case, that is factually identical to *SW General*, get a remand? The panel ignored all arguments, issued no decision, and summarily *remanded* the case back to the NLRB. Midwest Terminals, has identical in facts to *SW General* and cannot be legally treated differently in the Panel's remedy than the panel did in *SW General*.

## **2. The Panel in this Case Failed to Follow Circuit Court Precedent**

The law is clear, once a panel decision is made and final, a second panel cannot simply refuse to follow the decision. The prior panel decision is binding on the subsequent Circuit Court panel decisions. *See, In re Jaylaw Drug, Inc. v. United States Internal Revenue Service*, 621 F.2d 524, 527 (2d Cir. 1980).



If in fact the Midwest Terminals panel believed that the panel in *SW General, Inc.* was wrongly decided because that panel did not remand the case back to the NLRB, then oral argument should have been scheduled and a written decision issued. That decision should have followed *SW General*, but it could have solicited from the NLRB an *En Banc* appeal for possible reversal.

Given the fact the Supreme Court affirmed the Circuit in *SW General*, such a decision to remand would be difficult to explain in a written decision. This issue of Remand or no Remand was fully briefed to the Panel, yet the Panel opted to not give any explanation as to why it was deviating from both the *SW General* prior panel and Supreme Court decisions. With no written decision it is difficult for Midwest Terminals to understand why this Panel did not follow *SW General's* remedy? Clearly, in both cases facts are identical but different only in the remedy issued. Midwest Terminals is now forced to endure tens of thousands of dollars of *new* litigation costs for absolutely no valid reason. On top of that, even under the Equal Access to Justice Act, while Midwest Terminals will request the Loadstar calculations, it in all likelihood will not get 100% of its litigation costs back. The reason Midwest Terminals case was remanded simply defies logic and for lack of a written opinion is unknown to all.

*SW General* without question got the better result by a huge margin. The litigation in *SW General* is over – it won *everything*. The litigation in Midwest

Terminals continues for years into the future. The NLRB has now tried to change the procedural facts in the case and will argue that *SW General* no longer applies.

### **3. Midwest Terminals Must Now Litigate in two Forms**

Because this Court issued an immediate Mandate, the NLRB has already accepted jurisdiction of the case and in a letter to Midwest Terminals it Demanded a Position Statement by August 15, 2017, but has extended it 14 days. Copy attached as Exhibit D.

Midwest Terminals has no choice but to file before this Court this Petition for Hearing or Rehearing En Banc. Depending on the outcome of this Petition, Midwest Terminals is prepared to file a *Petition for Certiorari* over this matter. After all, *the Supreme Court affirmed the remedy in SW General*.

Because the time for Midwest Terminals under standard practice is 45 days to file its Petition in this Circuit, Midwest Terminals is now fighting this case at the same time before both the NLRB and this Court because this Court without any explanation issued an extraordinary immediate Mandate.

The normal practice would be for Midwest Terminals to move to stay the Mandate until after its appeals have been exhausted. Maybe the panel felt like Midwest Terminals “won the case” and no appeal would be filed so an immediate Mandate was harmless? That is possible. It is true that Midwest Terminals “won” in that the entire decision was vacated and a Motion for attorney fees will be filed

shortly. But Midwest Terminals and Newark Electric hope that this Court understands that there is in fact an appeal here that is worthy of either a Petition for Hearing or Rehearing En Banc.

Both Midwest Terminals and Newark Electric have filed Motions to Recall the Mandate and to Stay the NLRB case pending appeal so as not to force them to litigate in two forums at the same time. Midwest Terminals does not believe it is asking too much of this Court to recall an extraordinary issuance of a Mandate for no reason other than the NLRB asked for it.

Therefore, the Court should now undo the impact of the Panel's extraordinary Mandate issued and STAY the NLRB proceedings that is now ongoing at the same time that Midwest Terminals appeals the panel decision and accept the Petition for Hearing or Rehearing En Banc.

#### **4. This Court Gave Cart Blanch to the NLRB**

Given the issues involved in *SW General*, with General Counsel Solomon having been found to have engaged in *ultra vires* acts of power, this Court gave zero guidance to the NLRB as to what it can or cannot do under the Midwest Terminals procedural facts. Those facts are that Charges were received by General Counsel Solomon who many years later processed a Complaint against Midwest Terminals. A Trial was held. An ALJ issued a decision. Briefs were filed on appeal to the NLRB. An NLRB decision issued. And an appeal taken to this Court. Like *SW*

*General*, throughout all of these stages Midwest Terminals raised the defense that General Counsel Solomon had no authority to act at all.

As this Court in *SW General* held and the Supreme Court affirmed, Mr. Solomon was not authorized to do any of these acts. ALL of those acts were outside his government powers. Yet, without any legal authority to even file a Motion to Vacate and Remand, that is exactly what happened in a case that was unlawfully brought from the beginning. It is still now being litigated unlawfully by the NLRB. The NLRB is asking for a position statement in a case that the Supreme Court says should never have been filed in the first place.

In addition, exactly as we predicted in our briefs in opposition to a Remand, the General Counsel did exactly what we warned the Panel it would do. Attached as Exhibits E and F, dated August 14, 2017 and August 16, 2017, wherein the General Counsel, after the Midwest Terminals decision was vacated, seeks to now raise the case from the dead. Having consistently argued all the way to the Supreme Court that he was not required to ratify Mr. Solomon's actions, and then stood by that argument and *never* raised the defense in this case that he had "ratified" the actions of Mr. Solomon, the General Counsel thinks he can raise this case from the dead.

It is clearly understandable why the Panel in *SW General* did not remand. The defense of ratification had never been raised by the General Counsel. He litigated

the entire case on the assertion he did not have to ratify, and he was so bold as to even refuse to do so as a “back-up” -- just in case he lost.

Now, having lost the issue and knowing that the cases of Midwest Terminals and Newark Electric would be vacated, the General Counsel then pulled a fast one on the Circuit Panel. He asked for a “remand” with the specific intent to do *exactly* what he did. Forget about the fact he insisted throughout these cases that he did not have to ratify. Forget about the fact he did not ratify. Forget about the fact the decisions and all the proceedings below against Midwest Terminals are now totally vacated. The General Counsel asked the Panel to just “remand” so he can pretend that none of this happened. But it did happen.

It is no wonder why the panel in *SW General* vacated and did not remand. After all, if it was unlawfully prosecuted in the first place, all a remand does is to continue the unlawful prosecution on a defense the General Counsel waived.

For this Court with these facts to state nothing in its Remand to the NLRB was wrong. All this Court has done is to consign Midwest Terminals to endless litigation over a case improperly prosecuted for years and to ask the NLRB to do the Panel’s job for it. The NLRB is a Government Agency -- not a lower Article Three Federal Court.

**5. The General Counsel’s Ratifications are a Farce.**

The Undersigned attended a conference where General Counsel Griffin spoke in March of 2017. The Undersigned questioned him regarding all the pending cases where this *SW General* defense was raised. Mr. Griffin stated that since *SW General* was issued by the DC Circuit that he had ordered his office to conduct a complete review of *every case* before the NLRB where the Respondent had raised a similar defense. He would then decide if he should reaffirm them. In a follow-up question by the Undersigned I asked General Counsel Griffin how many of all the cases that he had reviewed did he reaffirm? The response was “all of them.”

Therefore, there is no doubt that the General Counsel is trying to change the “procedural facts” in this case exactly as Midwest predicted. The General Counsel had a specific agenda in this case that could only be achieved in a remand. This is why the General Counsel sought this remand to try and raise a new defense that he has to date *never plead, raised or briefed* in this case. Thus, General Counsel Griffin has attempted to procedurally change the facts in this case and reaffirm former General Counsel Solomon’s actions and to create a defense where none existed before he leaves office in October 2017.

This action by the Panel to Remand was given on the basis of nothing more than the mere fact the General Counsel “requested it.” This was a procedural trick by the General Counsel.

With all due respect, the Panel should *never* have assumed the NLRB had pure motives. The Court has in its opinions made clear that the NLRB will often refuse to follow this Circuit Court's rulings due to *nonacquiescence*. *Heartland Plymouth Court MI LLC v. NLRB*, 838 F.3d 16, 20-21 (D.C. Cir. 2016). Midwest Terminals strongly argued against the remand and the NLRB General Counsel is doing everything in his power to limit *SW General* not only to its "facts" but to make sure that there will be no other case with the same facts.

The Circuit Court and the Supreme Court went to great lengths to lay out the law and the unlawful acts of the General Counsel and *BOTH* Courts agreed that no remand should be made back to the NLRB. By the Remand, and now the General Counsel's actions if allowed, then there will be in only one case that will not have to continue fighting with the NLRB and that is *SW General*.

#### **6. The General Counsel Cannot Lawfully Ratify This Case**

As stated above, the General Counsel is attempting to circumvent the Court's decisions in *SW General* by seeking to waive a magic wand and pronounce everything that was unlawful that General Counsel Solomon did is now by magic lawful.

However, as stated above, Midwest Terminals raised this defense from the beginning. The General Counsel throughout the litigation never once sought the

protection of the exemptions under Federal Vacancies Reform Act ("FVRA"), 5 U.S.C. § 3345 *et seq.*

The General Counsel has for years in this case been in denial that FVRA even applies. Thus, with no action taken over all these years by the General Counsel, from waiver to estoppel there is no way the General Counsel can get away with this after all the years of litigation. *See, Hooks ex rel. NLRB v. Kitsap Tenant Support Servs.*, 816 F.3d 550, 553 (9th Cir. Wash. Mar. 7, 2016). The General Counsel's only hope is to try and argue that after years of litigation FVRA can now make this case rise from the dead. However, this defense was waived a long time ago.

Like the 9<sup>th</sup> Cir. finding in *Hooks*, nowhere in the litigation did the General Counsel ever seek the protections of FRVA.

#### **7. The so called "Latches" Defense has Been No Defense at All**

Because Midwest Terminals in fact had in this case a "latches" argument that was raised at the NLRB levels and rejected by BOTH the Administrative Law Judge and the NLRB as having no application to NLRB cases, Midwest Terminals is at a loss to figure out what this Panel was addressing in its decision in its very short decision?

Some of the NLRB charges were filed five years before the General Counsel placed them into a Complaint, *even the ALJ found as a fact that Midwest Terminals was prejudiced by the delay*, and the ALJ still ruled against Midwest Terminals on



the bases of long established case prescient. Thus, we have no idea what the Panel was thinking in such a short non-descript statement with no way to understand the text or the meaning. The NLRB has never recognized latches as a defense, so Midwest Terminals has no idea what the Panel's thinking was on this point that it is somehow now going to get a different result?

**8. Midwest Terminals Petition for a Rehearing or a Rehearing En Banc Should be granted.**

There is no explanation from this Panel or why it deviated from the panel decision in *SW General* and remanded the exact same case that is identical to *SW General*.

It is submitted that the Petition for Hearing and Rehearing En Banc should be granted in the interests of justice to address the propriety of that portion of the Court's Order remanding the case to the NLRB for further proceedings. By remanding the case to the NLRB the Panel has at a minimum: 1) Created a difference in results between cases pending at the same time (this case and *SW Gen., Inc.*); 2) Created an intra-circuit conflict between the Panel in this case and the panel in *SW Gen., Inc.*; 3) is in direct Conflict with the Supreme Court decision as well; 4) treated two employers whose injuries resulting from the exact same operative circumstance manifestly differently by not having the same rule of law applied to them.

WHEREFORE, Petitioners/Cross-Respondents prays that this Honorable Court grant the Petition for Panel Rehearing or, alternatively, Petition for Rehearing En Banc.

Respectfully submitted,

/s/ Ronald L. Mason

Ronald L. Mason (0030110)

Aaron Tulencik (0073049)

Mason Law Firm Co., L.P.A.

*Counsel for Petitioners/Cross-Respondents*

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2017, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

Respectfully submitted,

/s/ Ronald L. Mason

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Aaron Tulencik (0073049)

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*Counsel for Petitioners/Cross-Respondents*

CERTIFICATE OF COMPLIANCE OF WORD COUNT

I hereby certify that this document was has a word count of 3366 words.

Respectfully submitted,

/s/ Ronald L. Mason

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*Counsel for Petitioners/Cross-Respondents*

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 15-1126**

**September Term, 2016**

**NLRB-8CA038092**

**Filed On: July 14, 2017**

Midwest Terminals of Toledo International,  
Inc.,

Petitioner

v.

National Labor Relations Board,

Respondent

Consolidated with 15-1168

**BEFORE:** Tatel, Brown, and Wilkins, Circuit Judges

**ORDER**

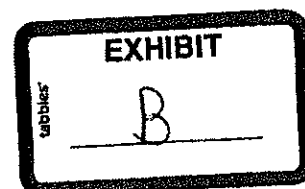
Upon consideration of the motion to vacate and remand and for expedited issuance of mandate in light of the Supreme Court's decision in NLRB v. SW General, Inc., the opposition thereto, and the reply, it is

**ORDERED** that the petition for review be granted, the cross-application for enforcement be denied, the decision of the National Labor Relations Board be vacated, and the case remanded for further proceedings before the Board. See NLRB v. SW General, Inc., 137 S. Ct. 929 (2017), aff'g SW General, Inc. v. NLRB, 796 F.3d 67 (D.C. Cir. 2015). Petitioner may raise its laches argument on remand and seek judicial review if unsatisfied with the result.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to issue the mandate forthwith to the agency.

Per Curiam





/s/ Ronald L. Mason  
Ronald L. Mason (0030110)  
Aaron T. Tulencik (0073049)  
Mason Law Firm Co., L.P.A.  
P. O. Box 398  
Dublin, OH 43017-0398  
(614) 734-9450  
e-mail: [rmason@maslawfirm.com](mailto:rmason@maslawfirm.com)  
e-mail: [atulencik@maslawfirm.com](mailto:atulencik@maslawfirm.com)  
*Counsel for Petitioner Midwest Terminals of Toledo  
International, Inc.*

**CERTIFICATE OF SERVICE**

I hereby that on August 28, 2017, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Ronald L. Mason  
Ronald L. Mason (0030110)

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MIDWEST TERMINALS OF TOLEDO  
INTERNATIONAL, INC.

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Nos. 15-1126  
15-1168

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**PETITIONER'S RULE 26.1 CORPORATE DISCLOSURE STATEMENT**

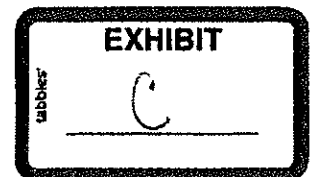
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Pursuant to Federal rule of Appellate Procedure 26.1 and Circuit Rule 26.1 and to enable the Judges of the Court to evaluate possible disqualifications or recusal, the undersigned counsel for Petitioner Midwest Terminals of Toledo International, Inc. ("Midwest Terminals") states that Midwest Terminals has no parent corporation(s) and no publicly-held company has any ownership interest in Midwest Terminals. Midwest Terminals is engaged in the stevedore/warehousing business with facilities located in Toledo, Ohio.

Respectfully submitted,

/s/ Ronald L. Mason

Ronald L. Mason (0030110)  
Aaron T. Tulencik (0073049)  
Mason Law Firm Co., L.P.A.  
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e-mail: [atulencik@maslawfirm.com](mailto:atulencik@maslawfirm.com)



*Counsel for Petitioner Midwest Terminals of Toledo  
International, Inc.*

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/s/ Ronald L. Mason  
Ronald L. Mason (0030110)





United States Government

OFFICE OF THE EXECUTIVE SECRETARY  
NATIONAL LABOR RELATIONS BOARD  
1015 HALF STREET SE  
WASHINGTON, DC 20570

August 10, 2017

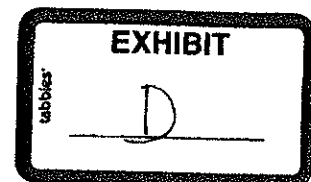
Re: Midwest Terminals of Toledo, Inc.  
Case 08-CA-038092, et al.

**EXTENSION OF TIME TO FILE  
POSITION STATEMENTS ON REMAND**

The request for an extension of time in the above-referenced cases is granted. The due date for the receipt in Washington, D.C. of Statement of Position with respect to the issues raised by the Court's remand to the Board is extended to August 29, 2017. This extension of time for filing position statements applies to all parties.

/s/ Farah Z. Qureshi  
Associate Executive Secretary

cc: Parties  
Region



To: Ronald Mason, Esq.  
Matthew T. Hurm, Esq.  
Joseph C. Hoffman, Jr., Esq.  
Aaron T. Tulencik, Esq.  
Region 8  
Kelly Freeman, Esq.

Attached is ESO response to EOT request in above-subject case.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**MIDWEST TERMINALS OF TOLEDO, INC.**

**and**

Case 08-CA-038092

**MARK ANTHONY LOCKETT**

**NOTICE OF RATIFICATION**

The prosecution of this case commenced under the authority of Acting General Counsel Lafe E. Solomon during the period after his nomination on January 5, 2011, while his nomination was pending with the Senate, and before my confirmation on November 4, 2013.

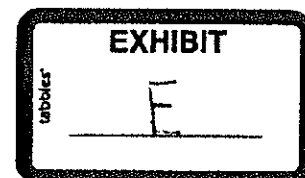
On March 21, 2017, the United States Supreme Court held that Acting General Counsel Solomon's authority under the Federal Vacancies Reform Act (FVRA), 5 U.S.C. §§ 3345 et seq., ceased on January 5, 2011, when the President nominated Mr. Solomon for the position of General Counsel. *NLRB v SW General, Inc.*, 580 U.S. \_\_\_, 137 S. Ct. 929 (March 21, 2017).

I was confirmed as General Counsel on November 4, 2013. After appropriate review and consultation with my staff, I have decided that the issuance of the complaint in this case and its continued prosecution are a proper exercise of the General Counsel's broad and unreviewable discretion under Section 3(d) of the Act. Congress provided the option of ratification by expressly exempting, pursuant to FVRA Section 3348(e)(1), "the General Counsel of the National Labor Relations Board" from the FVRA provisions that would otherwise preclude the ratification of certain actions of other persons found to have served in violation of the FVRA.

For the foregoing reasons, I hereby ratify the issuance and continued prosecution of the complaint.

Date: August 14, 2017

/s/ Richard F. Griffin, Jr.  
Richard F. Griffin, Jr.  
General Counsel



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**MIDWEST TERMINALS OF TOLEDO, INC.**

**and**

**Case 08-CA-038092**

**MARK ANTHONY LOCKETT**

**AFFIDAVIT OF SERVICE OF: Notice of Ratification of Complaint and Prosecution of  
Complaint and Letter to the Board regarding this Ratification.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 14, 2017 I served the above-entitled document(s) by regular mail, as noted below, upon the following persons, addressed to them at the following addresses:

Otis Brown  
2105 N Detroit Ave  
Toledo, OH 43606-4713

Aaron T. Tulencik , Attorney  
Mason Law Firm Co., L.P.A.  
425 Metro Plaza N. Ste., 620  
Dublin, OH 43017-5357

Miguel Rizo, Sr., Local 1982 Steward  
International Longshoremen's Association -  
AFL-CIO, Local 1982  
2632 Hayden St  
Oregon, OH 43616-2110

Alex Johnson , Owner  
Midwest Terminals of Toledo, Inc.  
3518 Saint Lawrence Dr  
Toledo, OH 43605-1079

Mark Anthony Lockett, Sr.  
3334 Elm St  
Toledo, OH 43608-1254

Matthew T Hurm, Esq.  
Faulkner Hoffman & Phillips LLC  
20445 Emerald Pkwy Ste 210  
Cleveland, OH 44135-6029

Ronald L. Mason, Esq.  
Mason Law Firm Co., L.P.A.  
425 Metro Pl N Ste 620  
PO Box 398  
Dublin, OH 43017-5357

August 14, 2017

Date

Lily Nguyen

Designated Agent of NLRB

Name

/s/ Lily Nguyen

Signature

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**MIDWEST TERMINALS OF TOLEDO, INC.**

**and**

**Case 08-CA-038092, et al.**

**MARK ANTHONY LOCKETT**

**AMENDED NOTICE OF RATIFICATION**

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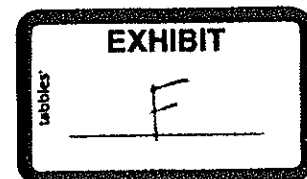
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For the foregoing reasons, I hereby ratify the issuance and continued prosecution of the complaint.

Date: August 16, 2017

/s/ Richard F. Griffin, Jr.  
Richard F. Griffin, Jr.  
General Counsel



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**MIDWEST TERMINALS OF TOLEDO, INC.**

**and**

**Case 08-CA-038092, et al.**

**MARK ANTHONY LOCKETT**

**AFFIDAVIT OF SERVICE OF: Amended Notice of Ratification of Complaint and  
Prosecution of Complaint and Letter to the Board regarding this Ratification.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 16, 2017 I served the above-entitled document(s) by regular mail, as noted below, upon the following persons, addressed to them at the following addresses:

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Aaron T. Tulencik , Attorney  
Mason Law Firm Co., L.P.A.  
425 Metro Plaza N. Ste., 620  
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Alex Johnson , Owner  
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Name

/s/ Lily Nguyen

Signature